

mores have risen against the Roman law and have accepted out of it only what has been freely and rationally selected. Marriage amongst the German nations was a domestic and family function. Even after the hierocratic system was firmly established, it was centuries before the ecclesiastics could make marriage a clerical function.<sup>1</sup> In the usages of German peasants to-day may be found numerous survivals of heathen notions and customs.<sup>2</sup> In England the German mores accepted only a limited influence from the Roman law. The English have adopted the policy of the Romans in dealing with subject peoples. They do not meddle with local customs if they can avoid it. This is wise, since nothing nurses discontent like interference with folkways. The persistency of the mores is often shown in survivals, — senseless ceremonies whose meaning is forgotten, jests, play, parody, and caricature, or stereotyped words and phrases, or even in cakes of a prescribed form or prescribed foods at certain festivals.

86. Roman law. In the Roman law everything proceeds from the emperor. He is the possessor of all authority, the fountain of honor, the author of all legislation, and the referee in all disputes. Lawyers trained by the study of this code learned to conceive of all the functions of the state as acts, powers, and rights of a monarchical sovereign. They stood beside the kings and princes of the later Middle Ages ready to construe the institutions of suzerainty into this monarchical form. They broke down feudalism and helped to build the absolutist dynastic state, wherever the Roman law was in force, and wherever it had greatly influenced the legal system. The church also had great interest to employ the Roman law,

because it included the ecclesiastical legislation of the Christian emperors of the fourth and fifth centuries, and because the canon law was imitated from it in spirit and form. In all matters of private rights the provisions of the Justinian code were good and beneficial, so that those provisions won their own way by their own merit.<sup>3</sup> In the *Sachsenspiegel* there was no distinction of property

1 Friedberg, *Recht der Erbschliessung*.

2 *Ztsft.f. Volkskunde*, XI, 272.

<sup>8</sup> Scherr, *Deutsche Kultur- und Sittengesch.* ^ 171.